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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,959	12/17/2001	Norio Kobayashi	027650-945	8014
21839	7590	11/13/2003	EXAMINER	
BURNS DOANE SWECKER & MATHIS L L P			JACKSON, MONIQUE R	
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1773

DATE MAILED: 11/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/913,959

Applicant(s)

KOBAYASHI ET AL.

Examiner

Monique R Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 2 is/are allowed.
- 6) ☒ Claim(s) 3-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1. The amendment filed 8/21/03 has been entered. Claims 1-8 are pending in the application. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

2. Claims 4-5 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 945 252 A2 (EP'252) in view of DeLisio et al for the reasons recited in the prior office action and restated below.

EP'252 teaches a laminated packaging film comprising (B) a metallocene-catalyzed linear low density polyethylene layer (mLLDPE) and (A) an aluminum layer wherein the aluminum layer may be formed by vapor deposition of aluminum onto a polymer base such as a polyethylene layer wherein the laminated film may comprise additional layers such as a paper substrate (C) and an additional polyethylene layer (D) on the opposite side of the aluminum layer (A) remote from (B), such that EP'252 teaches a laminate comprising the following layer structure: mLLDPE(B)/vapor-deposited aluminum on polyethylene base(A)/paper substrate(C)/polyethylene layer (D), which is similar to the laminate structures of instant claims 4 and 5 with the exception of the printing ink layer, however it would have been obvious to one having ordinary skill in the art at the time of the invention to provide printing layers on either or both exposed polyethylene surfaces of the laminate taught by EP'252 given that it is well known in the packaging art to utilize printing ink layers to provide product information wherein DeLisio et al specifically teach a packaging composite comprising an outer layer of mLLDPE which may be surface treated to make it more receptive to printing inks (Col. 4, lines 47-51.) The Examiner

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also notes that EP'252 teaches forming the aluminum layer by vapor depositing aluminum to the layer opposite from the mLLDPE however with regards to the aluminum deposition step, the Examiner takes the position that this limitation is a process limitation that does not materially affect the resulting composition given that the resulting composite comprises the same layers in the same order as the instant invention.

3. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP'252 in view of DeLisio et al for the reasons recited in the prior office action and restated below.

The teachings of EP'252 are discussed above. Though EP'252 teach various layer structures wherein the laminate may include a number of polyethylene layers, a mLLDPE layer on either side of the composite given that the polyethylene layer (D) may be mLLDPE, or an intermediate mLLDPE layer, EP'252 does not teach the laminate structure as instantly claimed in Claim 3. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to utilize any of the film layers taught by EP'252 and to determine the optimum number of each layer to provide the desired packaging properties for a particular end use particularly given that vapor deposited aluminum is a barrier material wherein an increase of aluminum thickness or increase of aluminum layers provides increased barrier properties.

Allowable Subject Matter

4. Claims 1-2 are allowed. The following is a statement of reasons for the indication of allowable subject matter: The teachings of the closest prior art are discussed above. EP'252 does not teach or suggest a step of vapor-depositing aluminum on one side of a web film containing mLLDPE, winding the metallized film temporarily for a predetermined time,

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unwinding the metallized film, laminating the metallized film to a carrier layer via an extruded polyethylene layer, and then forming a print layer on the external surface of the laminate.

Response to Arguments

5. Applicant's arguments filed 8/21/03 have been fully considered but they are not persuasive. The Applicant argues that the cited prior art references do not teach vacuum metallizing the mLLDPE but instead teach extruding a mLLDPE layer over a vacuum metallized layer and hence does not read upon the instant invention given the metallization step. However, the Examiner takes the position that the step of forming the metal layer by vacuum metallizing the mLLDPE layer is a process step that does not materially affect the final composite structure. Product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process." In re Thorpe, 227 USPQ 964,966 (Fed. Cir. 1985.) Therefore, the Examiner maintains that the instantly claimed product is obvious over the cited references.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 703-308-0428. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on 703-308-2367. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Monique R. Jackson
Primary Examiner
Technology Center 1700
November 5, 2003